

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 7/5/2009 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Examiner has not considered ITRM 20030404D because a copy was not provided by the applicant and one was not readily available to the examiner.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the round pool perimeter as required by claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8, 12-14, 16, 18, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent 2709144 to Alain.
5. Regarding Claim 1, Alain teaches an above-ground swimming pool comprising structural paneling 34 defining a pool perimeter, a plurality of structural vertical posts 28 regularly spaced apart along the pool perimeter and retaining the structural paneling 34, a structural ledge 24 supported by the structural vertical posts 28 and retaining the structural paneling 34 at a top end thereof along the pool perimeter, and a plurality of decorative panels 27/37/39/38 installed so as to substantially hide the structural paneling from view, see figure 1.
6. Regarding Claims 2-4, as previously discussed in pp-5 above, further the swimming pool comprises a base member 1 retaining the structural paneling 34 at a

bottom end thereof along the pool perimeter. The base member 1 also retains the decorative panels 27/37/39/38 at a bottom end thereof along the pool perimeter. The structural ledge 24 retains the decorative panels 27/37/39/38 at a top end thereof along the pool perimeter.

7. Regarding claims 5-8, as previously discussed in pp-5 above, further a single decorative panel 37 extends between and is retained by adjacent structural vertical posts 28. A plurality of decorative panels 27/37/39/38 connected to one another extend between and are retained by adjacent structural vertical posts 28. The plurality of decorative panels 27/37/39/38 are connected to one another side by side and on top of the other, see figure 2.

8. Regarding claims 12-14, 16, and 23, as previously discussed in pp-5 above, further the structural ledge 24 is hidden from view by a decorative ledge 18. The decorative ledge 18 retains the decorative panels 27/37/39/38 at a top end thereof along the pool perimeter. Each of the decorative panels 27/37/39/38 is shaped so as to mimic a series of horizontal wood boards. Each of the decorative panels 27/37/39/38 is shaped so as to mimic a single wood board. The decorative ledge is shaped 'so as to mimic' a plurality of wood boards to the extent claimed. The upper face of the ledge comprises of plurality of boards that 'mimic' the shape of a wood board.

9. Regarding claim 18, as previously discussed in pp-5 above, further the pool perimeter is polygonal, and the decorative panels 27/37/39/38 are at least in partial contact with the structural paneling 34 so as to define a second polygonal pool perimeter in close relationship with the pool perimeter, see figure 1.

10. Regarding Claim 45, Alain teaches an above-ground swimming pool comprising a skeleton structure (see figure 1) adapted to hold a body of water, and a decorative panel 27/37/39/38 assembly applied to the pool outwardly of the skeleton structure.

11. Claims 1, 4-16, 19, 22-33, 36-39, and 45 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6.795,986 to Marbach et al. (Marbach).

12. With reference to claims 1, 4-16, 19, and 22-23, Marbach teaches an above-ground swimming pool comprising structural paneling (1) defining a pool perimeter; a plurality of structural vertical posts (17) regularly spaced apart along the pool perimeter and retaining the structural paneling (see figure 1), a structural ledge (7) supported by the structural vertical posts and retaining the structural paneling at a top end thereof along the pool perimeter (see figure 1). The pool further comprises a plurality of decorative panels (12) installed so as to substantially hide the structural paneling from view. The structural ledge retains the decorative panels at a top end thereof along the pool perimeter, see figure 1.

A single decorative panel (one of the panels 12) extends between and is retained by adjacent structural vertical posts. Further, a plurality of decorative panels (12) are connected to one another extend between and are retained by adjacent structural vertical posts. The plurality of decorative panels are connected to one another side by side and one on top of the other, see the arrangement of the decorative panels (12) in figure 1. Each structural vertical post (17) is hidden from view by a decorative vertical post (8). As such, both a single decorative panel and a plurality of decorative panels extend between and are retained by adjacent decorative vertical posts. The structural

ledge (7) is hidden from view by a decorative ledge (15). The decorative ledge retains the decorative panels at a top end thereof along the pool perimeter, see figure 1.

Each of the decorative panels is shaped so as to 'mimic a series of horizontal wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28) and lie horizontally on top of one another. Each of the decorative panels is shaped 'so as to mimic a series of vertical wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28), and are installed vertically one on top of the other. Each of the decorative panels (12) is shaped so as to mimic a single wood board, see figure 1. The decorative panels are installed so as to obtain a second perimeter having a different shape than the pool perimeter, see figure 2. 22.

Each decorative vertical post is shaped 'so as to mimic at least one wood board' to the extent claimed as the decorative vertical posts (8) are of the shape of a common wood board, see figure 1. The decorative ledge (15) is shaped 'so as to mimic a plurality of wood boards' in so much as the decorative ledge comprises a plurality of pieces each shaped like a common wood board.

13. In reference to claim 45, Marbach teaches an above-ground swimming pool comprising a skeleton structure (1) adapted to hold a body of water, and a decorative panel assembly (12) applied to the pool outwardly of the skeleton structure.

14. With reference to claims 24-33, and 36, Marbach teaches a decorating kit for an existing above-ground swimming pool, the swimming pool including structural paneling

(1), a plurality of structural vertical posts (17) and a top structural ledge (7). the kit comprises a plurality of decorative vertical posts (8) designed to be attached over the structural vertical posts so as to substantially hide the structural vertical posts from view (see figure 1), a plurality of decorative panels (12) designed to be retained by adjacent decorative vertical posts so as to substantially hide the structural paneling from view (see figure 1), and a decorative ledge (15) designed to be attached to the decorative vertical posts so as to substantially hide the top structural ledge from view. The decorative ledge (15) retains the decorative panels (12) at a top end thereof, see figure 1. Each decorative panel (12) is composed of a plurality of smaller panels connected to one another and is shaped 'so as to mimic a single wood board' (see figure 1).

The plurality of smaller panels are connected to one another side by side and one on top of the other. Each of the decorative panels is shaped so as to 'mimic a series of horizontal wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28) and lie horizontally on top of one another. Each of the decorative panels is shaped 'so as to mimic a series of vertical wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28), and are installed vertically one on top of the other. The structural paneling (1) defines a pool perimeter, and the decorative panels are at least in partial contact with the structural paneling so as to define a second pool perimeter (along the edge of the decorative panels) in close relationship to the pool perimeter. The decorative panels (12) are

installed so as to obtain a second perimeter having a different shape than the pool perimeter, see figure 2.

Each decorative vertical post (8) is shaped 'so as to mimic at least one wood board' as they are shaped like a common wood board. The decorative ledge is shaped 'so as to mimic a plurality of wood boards' as it is comprised of a plurality of pieces each having the shape of a common wood board.

15. With reference to claims 38, and 39, the method step of installing the swimming pool structure as claimed and described in pp-14 above is met during the normal installation of Marbach.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alain.

18. As previously discussed in pp-5 above, further Alain fails to show the pool perimeter being round and the decorative panels are at least in partial contact with the structural paneling so as define a second round perimeter in close relationship with the pool perimeter. Alain also fails to show the decorative panels installed so as to obtain a second perimeter having a different shape than the pool perimeter. Instead, Alain teaches the perimeter being in a polygonal shape that is substantially circular wherein

the decorative panels are in partial contact with the structural paneling to define a second perimeter in a close relationship with the pool perimeter. The shape of the second perimeter substantially matches the shape of the pool perimeter.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pool perimeter and second perimeter to be round in shape as claimed as an alternate shape construction. Round pool perimeters are commonly known in the art of pools. It would have been further obvious to have modified the second perimeter to have a different shape than that of the pool perimeter as a matter of design choice, since the second perimeter is the outer surface of the pool which a user will see the user may wish to see a different shape than the structural pool perimeter shape.

19. Claims 7, 15, 28, 31, and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marbach.

20. With reference to claims 7 and 15, as previously discussed in pp-6, and pp-8 above, further Marbach fails to show the plurality of decorative panels connected to one another side by side and shaped so as to mimic a series of vertical wood boards. Instead, Marbach shows the plurality of decorative panels connected to one another one of top of the other.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the decorative panels of Marbach connected side by side therefore making them 'mimic a series of vertical wood boards' because the intent of the decorative panels was to enhance to look of the design, and making it look like vertical

wood would just be a simple aesthetic change to allow the decorative panels to have the known wood look, just in a different direction.

21. With reference to claims 28 and 31, as previously discussed in pp-12 above, further Marbach as modified in pp-21 above teaches the plurality of smaller panels connected to one another side by side and the decorative panels being shaped 'so as to mimic a series of horizontal wood boards'.

22. In reference to claim 38, Marbach teaches the structure of vertical posts/structural paneling/decorative panels as claimed.

Marbach fails to teach the specific method steps of installing a plurality of structural vertical posts in a regularly spaced-apart manner along a desired pool perimeter; installing structural paneling along the desired pool perimeter so that the structural paneling is retained by the vertical posts; installing a structural ledge defining the desired pool perimeter on top of the vertical posts, the structural ledge retaining the structural paneling along a top end thereof; and installing a plurality of decorative panels over the structural paneling so that the structural paneling is substantially hidden from view.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have assembled the pool of Marbach with the method steps of installing the pool structure as claimed to provide a working pool for a user to swim in.

23. In reference to claim 39, as previously discussed in pp-22 above, further a plurality of decorative panels (12) are installed so as to be retained by the structural vertical posts (17), see figure 1.

24. In reference to claim 40, the decorative panels (12) are installed wherein a plurality of the decorative vertical post is installed over a structural post such that the panel is connected on either edge by first and second decorative vertical posts (see figure 1). Therefore it would have been further obvious to have made the method step of installing the decorative panels as claimed.

25. In reference to claims 41 and 42, Marbach teaches a decorative ledge installed over a structural ledge as claimed. Therefore it would have been obvious to have included the step of installing a decorative ledge (15) over the structural ledge (7) so as to hide the structural ledge from view. The decorative ledge (15) is installed so as to retain the decorative panels (12) along a top end thereof, see figure 1.

26. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marbach in view of Alain.

27. As previously discussed in pp-22 above, further Marbach fails to show a step of installing a base member along the pool perimeter being performed, and the structural paneling is installed so as to be retained also by the base member. Marbach further fails to show the decorative panels installed so as to be retained by the base member.

Alain teaches a base member (1) which is installed along the pool perimeter. Structural paneling 34 is installed so as to be retained by the base member, see figure

4. Further, the decorative panels 27/37/39/38 are installed to as to be retained by the base member, see figure 4.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pool of Marbach to include a base with the structure as claimed to protect the ground which the pool sits on from damage. Therefore, it would have been obvious to have installed the base member as claimed to properly be able to use the pool.

28. Claims 20, 21,34, 35 are rejected under 35 U.S.C 103(a) as being unpatentable over Marbach in view of US Patent No. 5,866,264 to Zehner (Zehner).

29. Regarding Claims 20 and 34, as previously discussed in pp-12 and pp-14 above, further Marbach fails to show the decorative panels being made from extruded plastic. Instead, Marbach teaches the panels made of a wood/polymer material.

Zehner teaches an extruded plastic material that is used to replace wood, see column 1 lines 40-50.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have made the incorporated the synthetic wood of Zehner into the design of Marbach because not only is synthetic wood cheaper, Zehner teaches that the synthetic wood is suitable for use in place of wood (column 1, lines 5-10) such as is used in Marbach.

30. Regarding Claims 21 and 35, Marbach as modified in pp-29 above teaches the decorative panels made from thermoformed plastic (column 1, lines 40-50).

Conclusion

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Application Publication Number 2006/0031983 to Vultaggio teaches an above ground pool having a plurality of decorative panels installed side to side. U.S. Patent No. 4,548,005 to Glonek et al. teaches an above ground pool having vertical structural posts covered on the outer side by decorative supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./
Examiner, Art Unit 3751

/Gregory L. Huson/
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